

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3489 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

KALUBHAI

VERSUS

KAMLABHAI MADHUKARBHAI BHOYE

Appearance:

MR MK VAKHARIA for Petitioner

MR SR DIVETIA for Respondent No.2

None present for other Respondents

Coram: S.K. Keshote,J

Date of decision:24/10/1997

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The case in hand clearly exhibits how unavoidable litigation has come before this Court. In case the officers of respondent-State would have taken an objective and pragmatic approach in such matters, the litigations pending of the Government may be much less in number than what they are today.

3. The facts which are not in dispute are that the petitioner is a member of Schedule Tribe community and earns his livelihood as labourer. In pursuance of the policy of the State Government declared for the upliftment of the Schedule Tribe community, the petitioner applied for allotment of waste land situated at village Diwan Tebrun (Jamalpada) by his application dated 13th October 1967. The District Collector, Dang District, under its order dated 11th April/June 1968, was pleased to grant waste land of the State Government admeasuring 66 feet x 66 feet (0.4 Ar.) of Revenue Survey No.125/1A of village Diwan Tebrun (Jamalpada). The petitioner was put in possession of the said land and thereafter he constructed his residential house thereon and since then he is residing there. Later on, the land of Survey No.125/1A was given the Survey No.113/1A. The land of one Shri Mangu Limbu, which was originally bearing Survey No.113/1 was given Survey No.113/1C. This land of Mangu Limbu was put to auction as the holder of the land defaulted in payment of land revenue and in the auction, the land owned by Mangu Limbu was purchased by respondent No.1. The respondent No.1 came to know that the land including the land which was allotted to the petitioner falls in Survey No.113/1, and as such, she applied to the Collector, Dang District, that the land which is allotted to the petitioner is also purchased by her by public auction and therefore the land in question which is in possession of the petitioner should be handed over to respondent No.1. Under the order dated 11th September 1985, the District Collector, Dang District, has decided that the land admeasuring 0.1 R.A. of Revenue Survey No.113/1A and 0.3 R.A. of Revenue Survey No.113 totalling 0.4 R.A. be allotted to the petitioner and he further decided that the land which was in possession of the petitioner admeasuring 0.4 R.A. of Survey No.125/1B be allotted to the respondent No.1. The order aforesaid came to be confirmed by the Government. Hence this Special Civil Application.

4. It is not in dispute that the order of allotment of land made in favour of the petitioner in the year 1968, by the respondent-Collector has not been cancelled. The fact that the petitioner has been given possession of

the land as well as he constructed house thereon is also not in dispute. The learned counsel for the petitioner submitted that he has not made any encroachment whatsoever. He has only right, title and interest to retain 66 x 66 feet of the land and in case even an inch of land in excess of that is found in his possession, the petitioner will voluntarily surrender possession thereof to the respondent-State. The petitioner has already constructed house and is residing therein. It seems to be a case where because of some change of Survey number, some confusion has arisen, but that confusion could have been resolved out. It is a simple case of demarcation of land and respondent No.1 has also purchased some portion of the land in open auction for which she has also paid the amount. Even if there is some overlapping of the lands of the petitioner and respondent No.1, then too, instead of passing such harsh order against a Schedule Tribe labourer, an objective and pragmatic approach should have been made and controversy could have been resolved down to see that the petitioner only retains the 66 x 66 feet of land. Such a simple matter could have been resolved out by getting the demarcation of the lands and if some overlapping was there, the excess land could have been given to respondent No.1, but on the contrary, the matter has been complicated to the extent that a labourer belonging to Schedule Tribe community has been dragged into litigation.

5. In the result, this Special Civil Application is disposed of with direction to respondent No.2 to get the land in possession of the petitioner measured and in case the land in possession of the petitioner is found in excess of 66 x 66 feet, the petitioner shall surrender the excess land to respondent No.2. The petitioner shall not be entitled to retain an inch of the land in excess of the area 66 x 66 feet. In case the land is found to be in excess than the aforesaid area, in possession of the petitioner, the petitioner shall have an option to surrender that part of the excess land which does not put him at loss i.e. which may not be detrimental to him. These directions are to be carried out by respondent No.2 within a period of three months from the date of receipt of certified copy of this order. It is hoped that in case an objective and pragmatic approach is made by respondent No.2, the matter shall stand resolved to the satisfaction of petitioner as well as respondent No.1. However, still if some dispute survives, liberty is granted to the petitioner for revival of this Special Civil Application. Rule and Special Civil Application stand disposed of in aforesaid terms with no order as to costs.

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(sunil)